



*2001
Annual Report*

*Office of
Children's Ombudsman*

ANNUAL REPORT
2000-2001

Mission Statement

The mission of the Office of the Children's Ombudsman is to assure the safety and well-being of Michigan's children in need of foster care, adoption, and protective services and to promote public confidence in the child welfare system. This will be accomplished through independently investigating complaints, advocating for children, and recommending changes to improve law, policy, and practice for the benefit of current and future generations.

Table of Contents

Letter of Transmittal	5
Executive Summary	6
Conduct of the Office	8
OCO Impact on the Child Welfare System	8
Operations	10
Budget	11
Multi-Disciplinary Team	11
Training	11
Operating Protocol	12
Complaint Analysis and Investigative Findings	13
Recommendations	18
Children's Protective Services	18
Foster Care	20
Systems Issues	26
Legislative Amendments	27
Progress on Recommendations: 1995 to 2000	29
Appendices	
Appendix A: Acknowledgments	32
Appendix B: Frequency of Investigations by County	33
Appendix C: Complaint Process and Investigative Procedures	34
Appendix D: Intake and Investigation Process Flow Charts	37
Appendix E: Multi-Disciplinary Team Training	39
Appendix F: Public Act 204 of 1994	41



Commonwealth of Massachusetts

JOHN COVATTA
GOVERNOR

OFFICE OF CHILDREN'S COMMISSION
200-20

RECEIVED
2006 APR 10 10:40AM

April 2006

The Honorable John F. Covert, Governor

Mr. Timothy T. Farnell, Director, Executive Office of the Governor
100 State House, Room 1000, Boston, MA 02133

Enclosed for delivery is the 2005/2006 Annual Report of the Children's Commission pursuant to Public Law 94-142 (P.L. 94-142), "The Education of All Handicapped Children Act." Separately, you will also receive the Commission's annual report to the Governor, the Director of the Department, and the Legislature as required by statute. The contents of the Commission's annual report may be requested in any format by the Governor, Legislature, or Department of Education.

The report provides information on the general and specific work of the Office of Children's Commission from January 1, 2005 to November 30, 2005. It also contains the structure and responsibilities of the Office, its mission, and its goals, as well as the structure and responsibilities of the Office's various divisions. The report also contains information on the progress of the Office's various divisions. The report also contains information on the progress of the Office's various divisions. The report also contains information on the progress of the Office's various divisions.

The report of the Office of Children's Commission is a key document for the Governor, the Legislature, and the public. It provides information on the progress of the Office's various divisions. The report also contains information on the progress of the Office's various divisions.

Respectfully submitted,

R. Bruce Bailey, PhD
Children's Commissioner

Executive Summary

The Office of Children's Ombudsman was established by Public Act 204 of 1994, MCL 722.921, et seq, as an autonomous agency with the statutory responsibility to independently investigate complaints about children under the supervision of the Family Independence Agency (FIA) and private child-placing agencies.

This is the sixth annual report submitted by the Office of Children's Ombudsman (OCO), pursuant to Public Act 204 of 1994, MCL 722.921, et seq. The report analyzes the work conducted by the office during the twelve-month period between October 1, 2000, and September 30, 2001. It includes nine recommendations for changes in FIA policies and procedures and two proposals for legislation. The recommendations resulted from case investigations and complaints received by the OCO during the reporting period.

The report is organized into six parts: Conduct of the Office; Operations; Complaint Analysis and Investigative Findings; Recommendations; Progress Report on Previous Recommendations; and Appendices.

Conduct of the Office

This section describes the function of the office and provides an overview of the activities performed by the OCO that impact the child welfare system.

Operation of the Office

This section includes information on the OCO budget, personnel, training, and operating protocols.

- The Ombudsman's budget for Fiscal Year 2000-2001 was \$1,194,398.
- The staff comprises 13 full-time employees, including the Ombudsman, eight investigators, a supervising investigator, an intake investigator, and two administrative support staff.
- Staff participated in a total of 16 external training sessions.
- A Memorandum of Understanding was signed by the Ombudsman and the FIA director in June 2001.

Complaint Analysis and Investigative Findings

This section analyzes the complaints received by the OCO during the fiscal year. It also includes a review and analysis of the findings resulting from OCO case investigations conducted during the reporting period.

During this reporting period:

- The OCO received 815 complaints involving 1,274 children in 76 of Michigan's 83 counties, which represents a 12.5 percent increase in complaints compared with the previous fiscal year.

- The OCO accepted 158 complaints for investigation.
- Parents represented the largest group of complainants (37 percent), followed by relatives (26 percent), and foster parents (16.5 percent).
- The Ombudsman initiated complaints on 86 cases (13 percent).
- The OCO completed 172 investigations involving 685 children.
- In 86 of the cases investigated, the OCO affirmed the FIA and/or private agency.
- In 80 of the cases investigated, the OCO issued Reports of Findings and Recommendations encompassing a total of 413 findings and corresponding recommendations.
- Six cases were investigated and closed for discretionary reasons.¹
- Most of the findings/recommendations (294) involved violations of law and/or policy, followed by poor practice/decisions (109), systems issues (5), and inadequate law or policy (5).

¹ Occasionally, a case is closed because the complainant's issues have been resolved, either by the actions of the FIA or private agency, or by another entity such as the court, or because the circumstances affecting the case have changed.

Recommendations

This section contains eleven recommendations that resulted from complaints and/or case investigations conducted by the OCO during the reporting period. These recommendations include three that concern child abuse and neglect investigations, five regarding foster care, one systems issue, and two legislative proposals. Each recommendation is followed by a rationale. This section also includes the Family Independence Agency's response to each of the recommendations.

Recommendations:

1. Comply with policy requiring review and documentation of a parent's case history
2. Review the use of Families First services in certain cases
3. Utilize the Risk Assessment in Category IV Children's Protective Services (CPS) cases
4. Take certain actions when a child is placed with a non-custodial parent
5. Comply with foster care placement laws, rules, and policies
6. Improve the development and implementation of foster care permanency plans
7. Ensure that petitions to terminate parental rights are filed when mandated or otherwise appropriate

8. Comply with laws and policies regarding parenting time for parents of children in foster care
9. Comply with law regarding protocols for child abuse/neglect investigations
10. Amend the annual FIA Appropriations Act to prohibit the expenditure of State funds to reunite a child with a person convicted of attempted criminal sexual conduct
11. Amend the Child Protection Law to allow the OCO access to the identity of Children's Protective Services reporting persons

Progress Report on Recommendations from 1995 to 2000

This section provides a statistical analysis of recommendations issued in the OCO's five previous annual reports. It also lists six legislative proposals that have not been implemented to date.

Appendices

This section includes acknowledgments, a chart showing the number of investigations by county, OCO complaint and investigative procedures, intake and investigative process flow charts, a summary of team trainings, and a copy of PA 204.

Conduct of the Office

The Office of Children's Ombudsman was established by the Michigan legislature in 1994 in response to concerns about the child welfare system and the potential for harmful action or inaction by state and private agencies. Legislators were concerned that confidentiality laws designed to protect the identities of children involved with the State because of abuse and neglect issues also served to prevent outside entities from scrutinizing cases alleged to have been mishandled by the FIA or its contracted agencies.

As a result, the Michigan legislature passed Public Act 204 in 1994, giving the OCO the statutory authority to independently investigate complaints on behalf of children involved with the State because of abuse and neglect issues. Specifically, the OCO was mandated to "monitor and ensure compliance" with child welfare laws, rules, and policies by the FIA and private child-placing agencies. Additionally, the OCO was directed to submit to the governor, the legislature, and the FIA director "any recommendations regarding the need for legislation or for changes in rules or policies" to improve the child welfare system.

Multi-faceted System

While the OCO functions as an oversight agency for the FIA and private child-placing agencies, it is important to recognize that the child welfare system is comprised of many components that are beyond the statutory

reach of the OCO: law enforcement, judges and referees, prosecutors, children's attorneys, and state licensing and regulatory agencies, to name a few. Shortcomings on the part of any one of these agencies or individuals can negatively impact the outcome for a child. The OCO has frequently affirmed cases where the FIA or a private agency has fully complied with laws and policies and made sound decisions consistent with the child's best interests, only to have another part of the system fall short. Full compliance with laws and policies by the FIA does not necessarily guarantee a child's safety, well-being, or permanence, and efforts to improve outcomes for abused and neglected children must focus on making improvements to each component of this multi-faceted child welfare system.

OCO Impact on the Child Welfare System

As stated, the OCO's primary function is to provide oversight of the child welfare system by investigating complaints concerning children under the supervision of the FIA and private child-placing agencies. PA 204 states that the OCO is to "monitor and ensure compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, and treatment of children in foster care and adoptive homes." PA 204 also mandates that the OCO make recommendations to the governor, the legislature, and the FIA concerning the need

for changes to protective services, adoption, or foster care laws and policies.

In addition to these mandated requirements, the OCO impacts the child welfare system through other activities performed by the office, as outlined below:

- **Changes to laws, rules, and policies:** The OCO has made 105 recommendations for changes to laws, rules, and policies governing the child welfare system in its previous five annual reports. To date, 70 percent of those recommendations have been implemented into law or policy, or have resulted in other FIA action.
- **Assist complainants:** Since the office began its work on January 1, 1995, the OCO has processed 3,766 complaints. During the past fiscal year, the OCO received 815 complaints,² a 12.5 percent increase over the previous reporting period and a threefold increase from fiscal year 1995-1996. The OCO spends a significant amount of time helping complainants understand the complex laws, rules and policies that govern the child welfare system and

providing them with information and suggestions about existing administrative remedies. In addition, when complaints are not within the scope of the OCO's authority, both verbal and written referral information is provided to complainants directing them to the appropriate entity.

- **Investigate complaints:** Over the past six years, the OCO has completed 1,533 investigations, and issued 261 written reports of Findings and Recommendations on individual cases investigated by the OCO. These reports have encompassed over 1,500 findings and recommendations, many of which have resulted in new or amended policies, procedures, and local practices. In addition, the OCO has positively impacted the lives of many children through direct case intervention.
- **Case support:** When warranted, the OCO actively supports the FIA or private agencies in individual cases through such actions as appearing in court, writing opinion letters to judges or prosecutors, or facilitating case conferences. This involvement often has a direct impact on the protection and permanency of children.

- **Request for Action:** If during the course of an investigation the OCO believes that an immediate or specific course of action from the agency is required to protect a child from risk of harm, the OCO issues a Request For Action detailing the situation and requesting action by the agency. Actions might include a request to conduct an immediate home visit to verify a child's safety and well-being, or filing a court petition on behalf of a child. In other instances, the OCO may request an action that impacts permanency for the child, such as amending a report to include information that was omitted, or ensuring that CPS coordinates an investigation with law enforcement to enable criminal prosecution of a perpetrator.
- **FIA meetings:** Over the past year, the OCO has participated in regular meetings with FIA policy and program staff to discuss a variety of child welfare concerns. These meetings allow for an open exchange of information on a wide range of topics, and ongoing dialog has resulted in changes to FIA policies and procedures. Most notably during this fiscal year, the FIA implemented a program in conjunction with the

2 See Appendix C for an explanation of the complaint process.

Michigan Department of Community Health (DCH) that matches birth records of newborns with parents whose parental rights have been previously terminated on another child. When a birth match occurs, FIA conducts a field investigation to determine whether the newborn is safe or if removal is warranted.

- **FIA case discussion:** OCO staff meet with the FIA Family Advocate on a regular basis to discuss individual cases and to resolve issues arising from case investigations.
- **Commendation letters:** The OCO makes every effort when reviewing cases to ensure that outstanding casework is recognized and acknowledged. For this reason, the Ombudsman issues personal letters of commendation to those workers whose casework represents a high standard of excellence.
- **Publications:** The OCO produces and distributes an informative pamphlet to promote awareness and inform the public about the duties and responsibilities of the OCO. This year, copies of the OCO's pamphlet were distributed to all new foster parents in compliance with the new Bureau of Regulatory Services (BRS) child-

placing agency rules. During this fiscal year, the OCO also collaborated with the FIA and Children's Charter of the Courts of Michigan to produce an informative handbook for parents whose children are in foster care.

- **Web site:** The OCO maintains a web site (www.michigan.gov/oco) that provides the general public with information about the duties and responsibilities of the OCO, as well as related information.
- **Outreach:** During the past fiscal year, the Ombudsman and investigators gave informative presentations about the work of the OCO to a number of state and private agencies and organizations, including universities, civic clubs, boards, private child-placing agencies, and courts. In addition, the OCO gave presentations at the FIA Management meeting in Flint, Families First Cluster 10 Managers meeting in Lansing, Michigan Foster and Adoptive Parent Association conference in Detroit, the Court Appointed Special Advocate conference in Grand Rapids, and the Grandparents Raising Grandchildren annual conference in Reading. The OCO also participates regularly in the FIA's Child Welfare Institute training for new caseworkers to provide

information regarding the OCO's function, protocols and procedures.

- **Committees:** OCO team members serve on committees, task forces, advisory boards and teams throughout the year, including: Child Death Review Team, Child Protection Citizen Review Panel, Infant Brain Development Task Force, Substance Abuse Task Force, Child Welfare Institute Advisory Board, Foster Care Review Board, and the Court Improvement Project of the State Court Administrative Office.
- **Legislative sub-committee:** The OCO provided testimony to State Representative Lauren Hager's House sub-committee on Children's Protective Services. The sub-committee was appointed by State Representative Doug Hart to examine the current child protection system in Michigan, partially in response to two well-publicized cases involving children who died as a result of abuse or neglect following involvement with the child protection system.

Operation of the Office

Section 4(1) of PA 204 requires the Ombudsman to establish procedures for budgeting, expending funds, and employing personnel.

Budget

In fiscal year 2000-2001, the OCO received \$1,194,398 in appropriated funds. The principal expenditures were for personnel, office facilities, technology upgrades, and training. Funds were also used to enhance the automated case management system, upgrade the OCO web site, and print additional copies of the OCO brochure.

Multi-Disciplinary Team

The OCO has 13 full-time employees. The staff consists of the Ombudsman, eight investigators, a supervising investigator, an intake investigator, and two administrative support staff. During this fiscal year, the OCO provided internships to two students from Michigan State University. Two graduate student interns joined the office in September 2000; one from Michigan State University School of Social Work, and one from the Detroit College of Law, both of whom are participating in the Child and Family Advocacy Certificate Program through the Chance at Childhood: Law and Social Work Initiative.³

Since the inception of the office, the OCO has focused on a multi-disciplinary team approach to case investigations. Investigative team members have a broad range of experience

and diverse professional backgrounds. One new investigator, a former FIA employee with ten years experience as a Child Protective Services worker and Child Welfare Institute trainer, joined the team during this reporting period.

Team members include:

- A retired Michigan State Police officer who served over 25 years, including six years as an internal affairs investigator.
- A retired police investigator from the Detroit Police Department who served over 25 years, including 13 years as investigator of criminal child maltreatment cases in the child abuse unit.
- A former assistant prosecuting attorney for child sex abuse cases with experience as a law clerk and legal researcher.
- A former Children's Protective Services worker with Indian Child Welfare experience, and experience as a program manager and group social worker for emergency shelter homes and residential treatment facilities.
- A former educator and counselor with experience in prevention services with a private social services agency.

- A certified social worker with Family Independence Agency and private agency experience in foster care case management and foster home licensing.
- A licensed Ph.D. child psychologist and former State Senator and Representative who served 26 years in the Michigan legislature.
- A former FIA employee with 20 years experience, including 6 years as a foster home licensing and recruitment specialist.
- A former FIA employee with seven years experience as a Children's Protective Services worker in Wayne County, and 10 years experience as a direct care worker in mental health services.

Training

Team members receive specialized training in issues related to child abuse and neglect to improve their knowledge and investigative techniques.⁴ During this fiscal year, investigators participated in FIA's Child Welfare Institute to ensure current knowledge of new and updated FIA policies and practices. In addition, team members participated in a variety of state and national conferences and training sessions to improve their knowledge and skills, and gain an understanding of new

³ The Chance at Childhood: Law and Social Work Initiative is a collaborative program developed by the School of Social Work and Detroit College of Law at Michigan State University.

⁴ See Appendix E.

research and developments in the field of child abuse and neglect.

Operating Protocol

Since the inception of the office, an operating protocol has been established between the OCO and FIA to enable both agencies to fulfill their respective statutory duties. This protocol has been refined over the past five years to further clarify the relationship between the two agencies. During this fiscal year, the Memorandum of Understanding between the agencies, originally signed in December 1998 by the Ombudsman and the FIA director, was revised to establish time frames for responding to reports issued to the FIA by the OCO. The revised Memorandum of Understanding was signed in June 2001.

Complaint Analysis and Investigative Findings

5 PA 204, Section 5, states that the following individuals may make a complaint: (a) the child, if he or she is able to articulate a complaint; (b) a biological parent of the child; (c) a foster parent of the child; (d) an adoptive parent or prospective adoptive parent of the child; (e) a legally appointed guardian of the child; (f) a guardian ad litem of the child; (g) an adult who is related to the child within the fifth degree by marriage, blood, or adoption; (h) a Michigan legislator; and, (i) an attorney for any individual listed in sections (a) through (h).

6 PA 204, Section 6 (a) states that the Ombudsman may, "Upon its own initiative or upon receipt of a complaint from a complainant, investigate an administrative act that is alleged to be contrary to law, rule, or policy of the department or child placing agency, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds."

7 PA 204, Section 5.

8 In addition, six "exceptional" case closings occurred during the reporting period. These cases do not result in an affirmation or an F&R. See Appendix C, "case closure" for further explanation.

Complaint Analysis

The OCO's primary responsibility is to receive and investigate complaints from individuals concerning children who are involved with the State because of child abuse and neglect issues.

During the current reporting period, October 1, 2000, to September 30, 2001, the OCO received 815 complaints involving 1,274 children in 76 of Michigan's 83 counties, representing a 12.5 percent increase in the number of complaints received compared to the previous fiscal year.

Section 5 of PA 204⁵ outlines the individuals who can officially make complaints to the OCO. Currently, the statute excludes mandated reporters of suspected abuse/neglect, such as teachers, school counselors, medical professionals, day care providers, and law enforcement. While these individuals are ineligible to be official complainants, the Ombudsman has the discretion under Section 6 of PA 204 to open a case upon his or her own initiative if an investigation is warranted.⁶ However, individuals who are not included in PA 204 are not eligible to receive feedback from the OCO regarding action taken on a complaint, or notification of the outcome of an investigation.

The majority of OCO's complainants, as indicated in the Sources of Complainants chart,

were birth parents (37 percent), followed by relatives (26 percent), and foster parents (16.5 percent). The Ombudsman initiated complaints on 86 cases (13 percent) during this fiscal year.

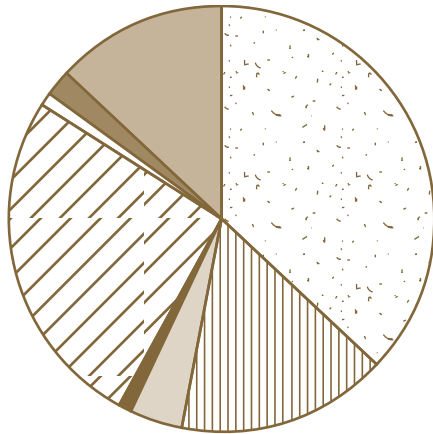
During this reporting period, 158 complaints were opened for investigation. Of these, 84 cases (53 percent) involved protective services, 35 cases (22 percent) involved foster care, 13 cases (8 percent) involved adoption services, while 26 cases (16 percent) involved a combination of those categories.

Review and Analysis of Investigative Findings

At the conclusion of an investigation, the OCO either affirms the actions of the FIA or the private agency that handled the child's case, or finds violations of law and/or policy. If the OCO finds that the actions of FIA and/or the private agency were imposed without adequate justification or were based on irrelevant, immaterial, or erroneous grounds,⁷ the OCO issues a draft report of Findings and Recommendations (F&R) to the FIA and/or private agency. This report summarizes the case background facts and identifies specific findings and corresponding recommendations. Recommendations might include providing additional training for a worker, or the need to amend a law or policy.

During the current reporting period, the OCO completed 166 investigations.⁸ Of these, the

Sources of Complaints



- Child – 0 – (0%)
- Birth Parent – 249 – (37%)
- Foster Parent – 107 – (16%)
- Adoptive/Prospective Adoptive Parent – 25 – (4%)
- Guardian – 7 – (1%)
- Relative – 172 – (26%)
- Legislator – 7 – (1%)
- Attorney – 16 – (2%)
- Ombudsman – 86 – (13%)

OCO affirmed the FIA and/or private agency in 86 cases (52 percent) and found violations and/or case mishandling in 80 cases (48 percent).⁹

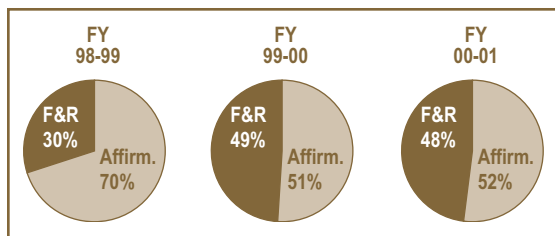
⁹ The number of affirmations and F&Rs represents cases that may have been opened prior to the reporting period but concluded during the 2000-2001 reporting period.

Five Reporting Years: Statistical Data Comparison

	Report 96-97	Report 97-98	Report 98-99	Report 99-00	Report 00-01	Totals for Five Reports
Months in Reporting Period	12	12	15	12	12	63
Number of Complaints	564	533	698	713	815	3,323
Average Number of Complaints per Month	47.0	44.4	46.9	59.4	68	53.14
Total Number of Children Served	1,121	1,063	1,490	1,267	1,274	6,215
Average Number of Children per Month	93.4	88.6	99.4	105.58	106	98.60
Average Number of Children per Complaint	1.99	1.99	2.3	1.78	1.56	1.92
Average Age of Children Served	NA	NA	7.35	7.65	7.79	7.59

Types of Complaints Received

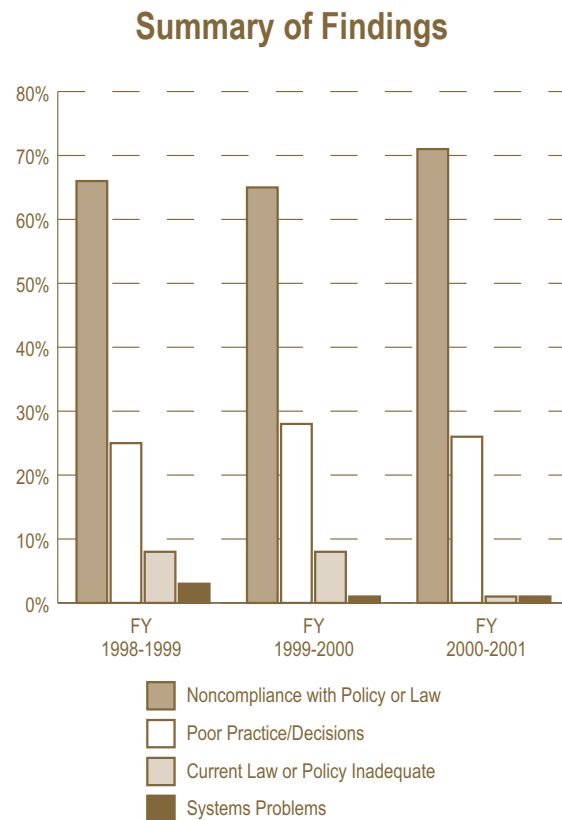
Complaint Types	October 1, 2000 – September 30, 2001	
Protective Services	84	(53%)
Foster Care	35	(22%)
Adoptive Services	13	(8%)
Combination	26	(16%)
Total Number of Investigations Opened	158	(100%)



As shown in the three small pie charts, the percentage of F&Rs issued by the OCO has risen from 30 percent in FY 1998-1999 to 49 percent in FY 1999-2000 and 48 percent in FY 2000-2001.¹⁰

Findings are grouped into four main categories: noncompliance with law and policy, poor practice/decision making, current law or policy inadequate, and systems issues.

As indicated in the Summary of Findings chart, OCO findings over the past three years reflect almost identical results, with non-compliance with existing law and/or policy representing the largest category of findings, followed by poor practice or decision making. The data also indicates that systems issues or inadequate laws or policies were less likely to contribute to case mishandling.



During the current reporting period, the OCO issued 80 F&Rs to the FIA and/or private agencies. These reports included 413 separate findings and corresponding recommendations. The majority of OCO findings (294) represented noncompliance with law and policy, followed by poor practice/decision making (109), inadequate law or policy (5), and systems issues (5).

An analysis of the F&Rs issued by the OCO during the reporting period shows that the following issues were most frequently the subject of findings:

CHILDREN'S PROTECTIVE SERVICES

- Termination of Parental Rights:**
 Under certain specified circumstances, the law requires CPS to include a request for termination of parental rights on the initial petition filed with the court. The law also allows CPS to request termination of parental rights when the facts and circumstances of a particular case warrant such action. The OCO continues to find instances where such requests are not made, although mandated or warranted in a given case.
- Structured Decision Making (SDM):**
 The SDM tools consist of various forms completed by the CPS worker at different stages of an investigation or an open CPS case. The SDM tools help the worker determine whether a child's immediate safety is threatened, the level of CPS intervention required, and the services needed for a particular family. The OCO found that the SDM forms were not always completed

¹⁰ This increase may be due, in part, to an enhanced screening of complaints, which was implemented in FY 99/00.

accurately, leading to an improper or inadequate response by CPS.

- **Review of Family History:** Each CPS investigation requires the worker to conduct a thorough review of the family's CPS history, including previous complaints, services provided, and the family's level of participation and response. This information is reviewed to detect patterns of abuse and neglect and to assess the family's willingness and ability to benefit from services. The OCO continues to find instances where case history was not reviewed or was not reviewed thoroughly, leading to an incomplete understanding of the current situation.
- **Assess Safety and Well-being of all Children:** CPS policy requires a worker to assess the safety and well-being of all children in a family even when only one child is alleged to have been mistreated. An allegation may give rise to concern for the safety and well-being of the other children in the family. The OCO continues to review cases where the safety and well-being of all children is not adequately assessed.
- **CPS Investigation Disposition:** A CPS worker is required to review

and consider all relevant evidence gathered during an investigation prior to determining whether a preponderance of evidence of abuse or neglect exists. The OCO finds that in some cases, the disposition of a complaint is not consistent with the evidence documented in the CPS investigation report.

- **Supervisory Oversight:** FIA policy requires supervisors to review CPS investigation reports, service plans, and other documents within 30 days of completion. The purpose of this policy is to ensure accurate completion of documents, review decision making, and allow timely correction of errors, if necessary. The OCO continues to find instances where the documentation would suggest supervisory oversight has not occurred, or has not occurred within appropriate time frames.
- **Working with Law Enforcement:** The Child Protection Law and CPS policy require that law enforcement be contacted within 24 hours of a CPS complaint alleging a child has been sexually abused. Law and policy also require that CPS and law enforcement cooperate to conduct a joint investigation. The OCO continues to review cases

where no referral to law enforcement was made and/or there was no effort by CPS to coordinate its investigation with law enforcement.

FOSTER CARE

- **Requests for Termination:** Federal law and FIA policy mandate that foster care workers request termination of parental rights in certain circumstances. In other situations, a request for termination of parental rights may not be mandated, but is suggested given the particular facts and circumstances involved. The OCO continues to review cases where requests for termination are not made or are delayed, contrary to permanency planning guidelines.
- **Relative Placement:** FIA policy requires that within 30 days of placement of a child with a relative, a home study must be completed. The home study must evaluate several specified criteria to ensure that the placement is in the child's best interests and consistent with the case plan. The OCO finds that in many instances placement with a relative is made, however, a home study is not completed or the home study does not satisfy the policy requirements.

- **Supervisory Oversight:** FIA policy requires supervisors to review and sign foster care service plans. Policy states that a supervisor's signature indicates agreement that the case progress is adequately documented, the child continues to need placement, the current placement meets the child's needs, and the treatment plan is appropriate. The OCO continues to review cases where service plans are not signed, not signed in a timely manner, or are signed despite deficiencies in the report relating to the above factors.
- **Monthly Contacts:** Law requires that the foster care worker visit the foster child in his or her placement on a monthly basis. Such contact is required in order to ensure the child's safety and well-being in placement and to assess the child's service needs and progress. The OCO finds that in many cases monthly visits are not occurring consistently.

Recommendations

“The Ombudsman shall submit to the governor, the director of the department, and the legislature an annual report on the conduct of the Ombudsman, including any recommendations regarding the need for legislation or for changes in rules and policies.”¹¹

CHILDREN’S PROTECTIVE SERVICES

1. Recommendation: The OCO recommends CPS ensure compliance with policy that requires workers to thoroughly review and document a parent’s¹² CPS and foster care history, including an assessment of past interventions and outcomes from previous case services.

Rationale: Current FIA policy requires workers to review historical information regarding all previous complaints, investigations and services. A review of the parent’s history is necessary to evaluate the current complaint in light of previous complaints and accurately assess the family situation. The OCO continues to investigate cases where it is apparent that even though the file was available, the worker did not review this important information. In other cases, FIA has been unable to locate the closed case file, or retrieval from storage has been so delayed that timely review of the history was not possible.

FIA Response:

Agree. Although there have been cases reviewed by the OCO, in which a worker may not have sufficiently documented a case history, the OCO has not reviewed a statistically significant number of cases nor have they reviewed a representative sample. Although FIA acknowledges that even one case that does not meet policy requirements is too many, the agency believes that this oversight is the exception rather than common practice. Nevertheless, to address the small number of identified cases, FIA has taken the following actions: FIA-CPS policy (CFP 713-10 p. 2, effective 5/01/01) clarified existing policy to state:

“This section must also include documentation, if appropriate, of issues including, but not limited to:

- Previous complaints and dispositions;
- Previous court involvement with the family;
- Prevalent and underlying family issues (e.g. substance abuse, lack of parenting skills, child behavioral issues, violence in the home, etc.);
- Previous services with which the family has been involved, outcomes of the services, and the relevance of these previous services to the current situation of family;

¹¹ PA 204, Section 10(5).

¹² or caretaker with whom the child has been residing.

- Patterns of child abuse and/or neglect.”

Additionally, the OCO’s Annual Recommendations will be shared with all Zones and Urban Counties for discussion with local offices to reinforce policy compliance. Follow-up will occur through targeted case reading and through the Peer Review Process.

2. Recommendation: The OCO recommends that Families First services not be used to prevent removal of a child from a family that presents deeply entrenched chronic problems, such as long-term substance abuse, serious mental health issues, or patterns of neglectful or abusive behavior. In addition, further research should be conducted to determine what presenting problems are most effectively addressed by the Families First services program. The outcome criteria should focus on measuring improved family functioning and child safety, rather than averting out-of-home placement.

Rationale: Families First services is an intensive, four-to six-week crisis intervention program that may be applied when a child has been abused or neglected and the risk of harm is determined to be so severe that the child is at imminent risk of removal from

the home. Families First services builds on identified family strengths to reduce the risk of harm to the child. Current eligibility criteria allow Families First services to be used, with some exceptions, to address a wide range of family problems and behaviors, including chronic problems, such as long-term substance abuse and mental illness.

The OCO has investigated cases where parental drug dependency or severe mental illness was the primary contributing factor to child abuse or neglect and Families First services was insufficient to significantly improve parental functioning and adequately reduce the risk of harm to the child over the long term. While families exhibiting such serious and chronic problems may achieve some short-term benefit from this intervention, current research¹³ indicates they are unlikely to sustain any meaningful change over time, leaving the child at an unreasonable risk for re-abuse or continued neglect. In cases where the primary factors impacting family functioning are chronic and deeply entrenched, more effective interventions should be employed to protect the child.

FIA Response:

Disagree. Federal Law – PL-96-272— and Michigan Law requires that “reasonable efforts” be made to prevent or eliminate the need for removal, whenever it is possible to safely maintain children in his/her own home.

FIA must examine each case individually to determine if efforts to keep the family together are reasonable. In many cases, intensive services such as Families First, serve as the agency’s last resort to safely keep children in the care of their parents. Families First is also an excellent means to provide service coordination (e.g. substance abuse treatment, parenting classes, etc.) and integration principles for those services. Families First is not mandated as a service to prevent removal; rather, Families First is merely an option to fulfill “reasonable efforts” requirements as appropriate. Families First should remain an option in all cases, but only used when appropriate.

The Families First program is evaluated on an ongoing basis. The outcome criteria for the Families First program are appropriate. If Families First is successful in preventing a removal, then family functioning and child safety has, of necessity, improved. If Families First is unsuccessful in effecting a change in family functioning and child safety, then CPS would have to initiate other services and/or approach the court on behalf of the child(ren). In each Families First case, a services plan is developed with the family, which focuses on action steps that need to be implemented in order to achieve improved family functioning and child safety. The objectives/goals are specific and measurable. Families First was never intended to be the “final” service; rather,

¹³ Westat, Inc., Chapin Hall Center for Children, University of Chicago, & James Bell Associates, Evaluation of Family Preservation Programs, U.S. Department of Health and Human Services interim report, January 8, 2001.

it is a short term intensive service whose goal, in part, is to engage families and enlist their cooperation in identifying needed services and coordinating those services to address both acute and long term/chronic problems.

In essence, Families First engages difficult families in such a way as to pave the way for other services to be utilized effectively. The Families First program has been a highly successful tool for CPS and for families; however, it is not the only tool, neither is it a tool to be used in all cases. CPS must always look at individual family needs and take appropriate action, in part based on an assessment of the family's capacity to achieve behavioral change. CPS cannot put families into "classes" and/or stereotype families based solely on presenting conditions and/or maladies.

3. Recommendation: The OCO recommends FIA comply with Section 8(d)¹⁴ of the Child Protection Law (CPL) that requires CPS workers to complete the Risk Assessment tool in all Category IV cases.

Rationale: Under the Five-Category investigation disposition system implemented in July 1999 pursuant to the CPL, FIA is required to complete the Risk Assessment tool

¹⁴ Section 8(d) of the CPL states: "Category IV-community services recommended. Following a field investigation, the department determines that there is not a preponderance of evidence of child abuse or neglect, but the structured decision-making tool indicates that there is future risk of harm to the child..."

whenever a Category I, II, III, or IV disposition is reached. However, current FIA policy and practice dictates that the Risk Assessment is only completed when a preponderance of evidence of abuse/neglect is found (Category I, II, or III investigation dispositions), but not in Category IV cases. When completed accurately, the Risk Assessment tool can be an effective predictor of future harm to a child, regardless of whether a preponderance of evidence of abuse/neglect was found during the investigation. The level of future risk to children in these families should be identified so that the worker may refer the family to services, commensurate with the risk to the child, with the ultimate goal of reducing the likelihood that the child will be harmed.

FIA Response:

Agree in part. The Michigan Child Protection Law requires completion of the "structured decision-making tool" (Risk Assessment) in all Category I-IV cases. Currently, FIA completes the Risk Assessment tool in Category I, II, and III cases; however, the Risk Assessment tool is not systematically available for use in Category IV cases. FIA is working diligently on the development of the new CPS-SWSS system, which will provide this capability when it is implemented in 2003. Currently, the Risk Assessment tool is being completed on Category IV cases as part of a pilot program in Saginaw and Van Buren Counties. In

the interim, FIA will continue to utilize the Safety Assessment (also a Structured Decision-Making tool) to assist workers in ensuring child safety.

FOSTER CARE

4. Recommendation: When FIA obtains court authorization to remove a child from his or her home and the child is subsequently placed with the non-custodial parent, the OCO recommends that all of the following actions be taken and documented in the case record:

- An assessment of the needs of the child, the parent from whom the child was removed, and the non-custodial parent to determine an appropriate case plan and necessary services.
- Provision of services to the child and the parent from whom the child was removed.
- Development of a case plan for reunifying the child with parent from whom the child was removed, or an alternative permanency plan if it is determined that reunification is not in the child's best interest.
- Provision of frequent and regular parenting time with the parent from whom the child was removed.

- Ongoing contact by the caseworker with the child, the non-custodial parent, and the parent from whom the child was removed.

Rationale: FIA policy requires the actions outlined above to be completed when a child is placed in foster care or with relatives. However, FIA has stated that law and policy do not require the agency to take these actions when a child is removed from one parent and placed with the non-custodial parent, under court jurisdiction. The FIA has justified this position stating that a child who resides with a parent is not in an out-of-home placement as defined by PA 116. The OCO finds that regardless of this technical distinction, the needs and interests of the child warrant the actions listed above. A child should not be deprived of the opportunity to be reunified after removal just because the child is placed with the non-custodial parent instead of in a foster home. The OCO has investigated cases where FIA has obtained a court order for removal and placed the child with the non-custodial parent without making efforts to resolve the problem that led to removal or providing parenting time or services to the child or the parents. In some instances, FIA recommended the court case be closed immediately with no further involvement

by the agency. When a child is removed from the home, it is in the child's best interest to be provided the same level of service regardless of whether the child is placed in foster care or with a non-custodial parent.

FIA Response:

Agree in part. FIA concurs that appropriate assessments, services, parenting time, and caseworker-child contacts need to occur; however, the Court sets forth custody related orders including legal and physical custody, parenting time and needed services; this does not fall under the jurisdiction of FIA. Contact standards are set forth in CPS policy and must be adhered to, subject to the Risk Assessment. CPS must also conduct appropriate assessments (Safety, Risk, Strength/Needs and the Assessment Summary) as part of any Category I, II, or III case.

Moreover, a Court may order transfer of custody from one parent to another as a result of a CPS petition; however, this does not imply that the court will keep an open abuse/neglect case or that CPS has authority and/or opportunity to implement a services plan. Additionally, as in any custody case, CPS does not file a custody recommendation; this is a function of the Friend of the Court. CPS does provide the court with sufficient facts, which the court may utilize in its custody decision.

5. Recommendation: The OCO recommends that FIA review caseworker practice to determine whether additional training is needed to ensure adequate knowledge of and compliance with foster care placement-related laws, rules, and policies.¹⁵ This includes:

- Consideration of placement selection criteria
- Procedures that must be followed when a child's placement is changed, including written notification to the child's caregivers and the criteria for appeal to the Foster Care Review Board
- Requirements regarding placement with relatives, including home studies and written notification of the agency's placement decision
- Maintaining the relationship between siblings in foster care

Rationale: The laws, rules, and policies related to the placement and replacement of children in foster care are directed toward supporting the permanency plan for the child and meeting the child's physical, emotional, educational, and safety needs. The placement criteria that must be considered when placing or replacing a child in foster care include: the child's placement preferences; proximity to the child's family to facilitate parenting time; maintaining relationships among siblings; placement with

¹⁵ Examples include: Child Placing Rule 400.12404: Placement criteria; Child Placing Rule 400.12405: Change of Placement; MCL 722.954a(2) and MCL 712A.13a(9): Placement with relatives; Policy CFF 722-3: Placement with siblings.

relatives; and minimizing the number of placements for the child.

While current laws, rules, and policies are adequate, the OCO continues to review cases where foster children are moved without proper notification to the foster parents/kinship caregivers; relatives are denied placement without proper consideration and/or notification; home studies of relatives are incomplete; and siblings are separated or the separation is maintained without adequate justification.

FIA Response:

Agree in part. All foster care workers have participated in a review of the new licensing rules when they took effect on January 1, 2001. However, FIA and private agency supervisors will be encouraged to provide their foster care workers with a refresher course regarding policies relating to placement, replacement, notification and sibling placement.

Moreover, in 2002, FIA will participate in a comprehensive self-assessment and subsequent Federal Child and Family Service On-Site Review, which will thoroughly assess each of the identified issues as well as all factors and barriers that impact those issues, including training needs. In preparation for the Federal Review, Program Office is in the process of developing a comprehensive case reading form that will incorporate all of the policy/law issues that will be targeted in the

upcoming Federal Review. Utilization of the new case reading form will provide a review of a statistically significant number of cases, from which reliable conclusions can be formed. If case reading results indicate a systemic problem, then FIA will approach the issue from a statewide perspective. If, however, case reading results indicate a local issue, then FIA will work with the involved counties. As barriers/needs are identified through the self-assessment and subsequent Federal Review, FIA will work to initiate effective measures to resolve the identified needs.

6. Recommendation: The OCO recommends that FIA and private child-placing agencies take steps to improve the development and implementation of the permanency plan for children in foster care. This includes:

- Heightened supervisory oversight in the development of the initial permanency plan and any subsequent changes to the plan
- Increased worker training to emphasize the mandate that the child's need for safety and permanency are the primary considerations when determining the appropriate permanency plan
- Increased worker training regarding:
1) conducting meaningful and comprehensive initial assessments

of the parent based on personal interviews with the parent, interviews with appropriate collateral sources, review of documentation and other informational sources; 2) identification of appropriate and effective interventions for parents when the plan is reunification; and 3) understanding of the obligation to achieve the permanency plan within a time frame that is consistent with the child's developmental needs

- Implementation of policy to require that if the worker recommends a permanency plan be extended or changed, that the reason be clearly documented in the Updated Service Plan along with an explanation as to how the recommended extension or change is in the child's best interest

Rationale: Except in aggravated circumstances, the State is required to make reasonable efforts to make it possible for a child to return home. The Adoption and Safe Families Act (ASFA) of 1997 clarified that "in determining reasonable efforts ...the child's health and safety shall be the paramount concern." However, the OCO continues to investigate cases with prolonged reunification plans without adequate justification. In some instances, the OCO has found that the time frame for reunification is maintained or

extended despite a parent's continued lack of significant progress toward achieving the goals of the case plan. In other cases, the decision to prolong a child's time in foster care appears to focus on the parent's interests rather than on the child's needs to achieve permanency and stability.

Michigan law states that, in most instances, a permanency planning hearing must be held within 12 months of removal of the child. However, if the parent does not make significant progress on the case plan and reunification efforts are no longer justified, then a change in the permanency plan can be made before the 12 months have expired. The majority of the grounds for termination of parental rights do not require the passage of a specified time period before termination can be pursued or granted. Of those that are dependent on time frames, the longest such time frame is 182 days from the initial dispositional order.

FIA Response:

Agree. Although there have been cases reviewed by the OCO, in which permanency was inappropriately delayed, the OCO has not reviewed a statistically significant number of cases nor have they reviewed a representative sample. Although FIA acknowledges that even one case wherein a child's permanency is inappropriately delayed is too many, the agency

believes that this oversight is the exception rather than common practice.

It is important to understand that FIA works in concert with lawyer guardian ad-litem, private agencies, parents, foster parents, prosecuting attorneys and the courts. Courts review all case service plans and permanency plans. Courts often provide clear direction to the agency regarding permanency. All partners work together to serve the best interest of children.

The OCO asserts that "the decision to prolong a child's time in foster care **appears** (emphasis added) to focus on providing the parent with more time to comply with the case plan rather than on the child's need to achieve permanency and stability." The decision to provide some parents with additional time to comply with a service plan is not necessarily mutually exclusive of the child's need to achieve permanency. The time frames as set forth in statute are not hard lines; rather, they are guidelines to assist in decision making. All throughout the process, the child's best interest is the key determinant, not an arbitrary time frame. Statute allows for the agency to present the court with "compelling reasons" for going beyond established time frames. FIA does not minimize the significance of the parent-child bond and we do not act on the belief that children are better off in adoptive homes so long as they can get there quickly. It is

dangerous for FIA to emphasize time frames at the expense of the best interest of children.

Nevertheless, to address the small number of identified cases, FIA has taken the following actions: FIA will review supervisory responsibilities and advocate for realistic expectations that allow sufficient time and resources to ensure that workers are engaging in effective case planning that strengthens the child and the family. Each case must be assessed individually and workers need to become increasingly effective at identifying a family's capacity to change, as soon as possible in the process. FIA will emphasize the importance of effective supervisory oversight in the development of the initial permanency plan and subsequent plans. FIA will reinforce the importance of documenting justification for an extension and/or change to a permanency plan.

Moreover, in 2002, FIA will participate in a comprehensive self-assessment and subsequent Federal Child and Family Service On-Site Review, which will thoroughly assess each of the identified issues as well as all factors and barriers that impact those issues, including training needs. In preparation for the Federal Review, Program Office is in the process of developing a comprehensive case reading form that will incorporate all of the policy/law issues that will be targeted in the upcoming Federal Review. Utilization of the new case reading form will provide a review

of a statistically significant number of cases, from which reliable conclusions can be formed. If case reading results indicate a systemic problem, then FIA will approach the issue from a statewide perspective. If, however, case reading results indicate a local issue, then FIA will work with the involved counties. As barriers/needs are identified through the self-assessment and subsequent Federal Review, FIA will work to initiate effective measures to resolve the identified needs.

7. Recommendation: The OCO recommends that when an agency documents in the foster care case service plan that reunification efforts are unreasonable (or no longer reasonable) and grounds for termination of parental rights exist, the agency take immediate steps to file a termination petition unless the agency documents that termination of parental rights is clearly not in the child's best interest.

Rationale: The OCO has investigated cases where the foster care worker documented in the case service plan that reunification efforts were unreasonable (or no longer reasonable), grounds for termination of parental rights existed, and termination was in the child's best interest, yet the worker failed to file a petition to terminate parental rights.

The OCO has been provided several explanations as to why this practice continues in some counties or with some agencies,

despite the existence of laws and policies geared toward achieving permanency through termination. The following explanations have been provided by local agencies:

- FIA must access the court through the prosecutor's office and the prosecutor's office has refused to file the petition on the agency's behalf.
- FIA believes they cannot file a petition unless granted permission in advance by the court.
- FIA does not file petitions in cases where it is believed, based on past experience, that the court will not accept the petition or will not rule in the agency's favor.
- Private foster care agencies report that the relationship with their local FIA office is such that the local FIA must provide approval before a petition can be filed, and FIA has refused to do so.

The agency with case responsibility is the petitioner in abuse/neglect proceedings and is responsible for petitioning the court to take the action the petitioner believes is in the child's best interests. The purpose of proceeding with the actual filing of a petition rather than merely documenting that termination is the appropriate plan is twofold: 1) it is the necessary next step towards achieving permanency for a particular

child; and 2) it establishes a record of the court's response to the petition, which is required in instances where a party to the case desires to challenge that response.

While the OCO is cognizant of the need to maintain cooperative working relationships among the FIA, private agencies, the prosecuting attorney's office, and the court, the agency must fulfill its responsibility to petition the court when it is in the child's best interests to do so. If a specific county or agency perceives the existence of barriers to fulfilling this obligation, the county or agency should pursue resolution with the prosecutor's office, court administration, etc.

FIA Response:

Agree. Within the OCO Recommendation is the acknowledgment that filing petitions is not solely within the discretion of FIA. For example, the courts often set forth procedures that dictate the process for submitting a petition to the court. Some courts require that petitions come through the local Prosecuting Attorney's Office, while others accept a petition directly from FIA. All parties must work together on a long-term basis and it is generally in the best interest of children for all parties to establish and maintain cooperative working relationships. When FIA acts independent of its partners, barriers are established that are difficult to remove.

Nevertheless, FIA is currently in the process of reviewing applicable policy for potential change/clarification, to strengthen language regarding FIA's responsibility to file termination petitions when it is either mandated, or grounds exist, and it is in the child's best interest. FIA is also working to support the field's attempts to resolve local issues with the court/prosecuting attorney in attempt to reinforce the mandatory nature of certain petitions and negotiate a mechanism for allowing FIA to file as required. Additionally, Outstate Operations has developed mechanisms for utilizing private pay attorneys to assist local FIA offices in filing petitions in situations wherein the local prosecuting attorney will not assist FIA and the petition is either mandated or indicated.

8. Recommendation: The OCO recommends that FIA and private child-placing agencies comply with the laws and policies pertaining to parenting time in foster care cases with a goal of reunification.

Pertinent Statutes state:

- If a juvenile is removed from his or her home, the court shall permit the juvenile's parent to have frequent parenting time with the juvenile. However, if parenting time, even if supervised, may be harmful to the juvenile, the court shall order the child to have a psychological evaluation or counseling, or both, to determine the appropriateness and the conditions of parenting time. The court may suspend parenting time while the psychological evaluation or counseling is conducted.¹⁶
- Unless parenting time, even if supervised, would be harmful to the child as determined by the court under section 13a of this chapter or otherwise, a schedule for regular and frequent parenting time between the child and his or her parent shall be implemented and shall not be less than once every 7 days.¹⁷
- The supervising agency shall require that its worker make monthly visits to the home or facility in which each child is placed. The supervising agency shall also require its worker to monitor and assess in-home visitation between the child and his or her parents. To ensure the occurrence

of in-home visits required under this subsection, the supervising agency shall institute a flexible schedule to provide a number of hours outside of the traditional workday to accommodate the schedules of the individuals involved.¹⁸

Pertinent Policies state:

- Supervising agencies must use parenting time to maintain and strengthen the relationship between parent and child. By facilitating weekly parent/child parenting time, agency staff can positively influence the length of time children stay in the foster care system and the time required to achieve permanence.¹⁹
- The frequency of parenting time prior to the dispositional hearing is an important indicator of how quickly children can be reunited with their families, when this is the plan. Therefore, the more frequent the parenting time the more likely the child will return home.²⁰
- The supervising agency is to institute a flexible schedule to provide a number of hours outside of the traditional workday to accommodate the schedules of the individuals involved.²¹

16 MCL 712A13a(11)

17 MCL 712A18f(3)(e)

18 MCL 722.954b(3)

19 FIA policy CFF 722-6.

20 Ibid

21 Ibid

- Parenting time is to occur in a child and family friendly setting conducive to normal interaction between the child and parent.²²

Rationale: It is well documented that the quality and frequency of parenting time correlates significantly with the success or failure of a family reunification plan. However, the OCO continues to see a lack of compliance with the above-noted laws and policies designed to facilitate successful parenting time and thus successful reunification plans. In many instances, the OCO finds that foster care agencies provide the minimum amount of parenting time required by law (generally one hour, once a week) rather than developing parenting time plans that meet the unique needs of each case. In addition, supervised parenting time often occurs at the agency in surroundings that may not be conducive to normal interactions between parents and children. Since parenting time is a measured component of a parent's case service plan and

²² Ibid

²³ The Michigan Child Protection Law, Section 8 (6), states, "In each county, the prosecuting attorney and the department shall develop and establish procedures for involving law enforcement officials as provided in this section. In each county, the prosecuting attorney and the department shall adopt and implement a standard child abuse and neglect investigation and interview protocols using as a model the protocols developed by the governor's task force on children's justice as published in FIA Publication 794 (8-98) and FIA Publication 779 (8-98), or an updated version of those publications.

²⁴ "Coordination with Prosecuting Attorney and Law Enforcement," Children's Protective Services manual, FIA policy CFP 712-3.

progress is reported to the court at each review hearing, the agency should make every effort to enhance the quality, duration and frequency of parenting time. Unless these efforts are made, parenting time cannot be used to accurately gauge the potential success of reunification or accomplish the stated goal of maintaining and strengthening the parent-child relationship.

FIA Response:

Agree. It is imperative that supervising agencies have flexible parenting time to accommodate individual schedules. It is also important that the environment in which parenting time occurs allows for normal, quality interaction between the child(ren) and the parent(s). However, the court oversees parenting time and often sets the parameters for parenting time, over which FIA/private agencies have no control. FIA supports increased training for agency staff on the value of parenting time, especially during the immediate period following the initial removal from the home.

SYSTEMS ISSUES

9. Recommendation: The OCO recommends that all of Michigan's 83 counties ensure that a child abuse and neglect investigation and interview protocol has been developed and implemented as required by Section 8(6)²³ of the Child Protection Law. If a protocol does not exist in each county, or if there is confusion

regarding the requirements of the protocol, then FIA, the County Prosecutor's office and law enforcement agencies should work together to ensure compliance with this law.

Rationale: Section 8(6) of the CPL requires that the prosecuting attorney and the FIA in each county adopt and implement a standard child abuse and neglect investigation and interview protocol. Effective in 1998, the law recommended that the protocol be modeled after one developed by the Governor's Task Force on Children's Justice. Development of an investigation and interview protocol is essential to ensure that FIA and local law enforcement jurisdictions coordinate their joint child abuse/neglect investigations, share information, and eliminate duplication of efforts. As stated in FIA policy, "It is extremely important that CPS staff and law enforcement personnel recognize and respect each other's respective roles and responsibilities in a joint investigation. Every effort must be made to maintain communication, coordination and cooperation between the two professions, and each must be sensitive to the professional needs of the other."²⁴

The OCO continues to investigate cases where it is apparent that the required protocols have not been adhered to or implemented, as evidenced by the following situations:

- CPS failed to make a referral to law enforcement within 24 hours of

receiving abuse/neglect allegations, as required by law and FIA policy. Instead, CPS first conducted its investigation to determine whether the allegations had a basis in fact. CPS has stated to the OCO that they were informed by local law enforcement that actual evidence of abuse is necessary prior to notifying law enforcement.

- Law enforcement and CPS conducted a joint investigation but relevant parties were not interviewed, information was not shared, there was a lack of follow-up on statements made during interviews, or evidence collected.
- CPS did not make law enforcement referrals at all, even in situations where the law clearly mandated that one be made.²⁵
- Law enforcement handled a criminal child abuse case, but failed to notify CPS when the perpetrator was a person responsible for the child. Notification to CPS would ensure that the alleged perpetrator is placed on the Central Registry if a preponderance of evidence of abuse/

neglect is found, and that the child victim and siblings are protected.

- Not all law enforcement jurisdictions within a county were aware of the protocol.

FIA Response:

Agree. Currently 82 counties have a joint investigation protocol in place. The remaining county is currently working to establish a protocol. The OCO needs to be mindful of the fact that there are many different agencies that must work together to successfully implement a protocol. FIA is only one partner, a partner with no enforcement authority over other partners. Successful implementation requires the active participation of all members. In situations wherein other member agencies struggle with collaboration, FIA is committed to working to resolve barriers and improve collaborative efforts; FIA has utilized the PAAM contract to work with counties to achieve compliance. Moreover, FIA will continue to work to ensure that every county has a functional, effective joint investigation protocol.

PROPOSED LEGISLATIVE AMENDMENTS

10. Recommendation: The OCO recommends that the standard language in the annual FIA Appropriations Act²⁶ be amended to read:

a) A child would be living in the same household with a parent or other adult who has been convicted of criminal sexual conduct OR ATTEMPTED CRIMINAL SEXUAL CONDUCT (CSC) against a child.

Rationale: The OCO investigated a case where a child's father had sexually abused an unrelated child and was arrested and charged with CSC 2nd degree involving the minor. The father accepted a plea bargain and was convicted of the lesser crime, attempted CSC 4th degree. Later, during abuse/neglect proceedings, the father requested the child be placed with him and FIA provided services to achieve that goal. This action was permissible, in part, because the law only precludes the State from expending funds to reunify a child with a person convicted of CSC against a child. Current FIA boilerplate language is not sufficient because it does not encompass those individuals who may have committed CSC against a child, yet accepted a plea bargain for a lesser offense. Such individuals pose no less of a threat to children because the ultimate conviction was attempted CSC, rather than CSC.

FIA Response:

Agree. FIA concurs that individuals who are convicted of attempted CSC pose a similar threat to children as those who have been convicted of CSC, 1st through 4th degrees. Additionally, Program Office will review CPS

25 A similar recommendation was made in the OCO 1996-1997 Annual Report.

26 Section 509(1)(a) of Act 82 of 2001

and Foster Care policy regarding use of community/other services to families to ensure policy is consistent regardless of funding source.

11. Recommendation: The OCO recommends that Section 5 of the Child Protection Law be amended to include (n) The Children's Ombudsman, to read:

Sec. 5. Except for records available under section 7(2)(a), (b), and (n), the identity of a reporting person is confidential subject to disclosure only with the consent of that person or by judicial process.

Rationale: Section 7 of the CPL lists the persons or agencies who may receive Children's Protective Services case files in order to carry out their duties as required by law. However, under Section 5 of the CPL, the identity of persons reporting child abuse or neglect must be kept confidential, except for records provided to: (a) A legally mandated public or private child protective agency investigating a report of known or suspected child abuse or neglect; and (b) A police or other law enforcement agency investigating a report of known or suspected child abuse or neglect. In order to thoroughly investigate a child abuse/neglect complaint, the Children's Ombudsman must be provided with complete case file documentation, including the identity of the reporting person.

FIA Response:

Neither Agree Nor Disagree. Although FIA strives to work cooperatively with the OCO, we have the following concerns regarding the OCO's recommendation: The OCO would compare itself to a public or private child protection agency and/or law enforcement when in reality the OCO has no such similar function. The OCO does not investigate allegations of child abuse or neglect. Rather, the OCO investigates child protection agencies for failure to perform a statutorily mandated function or failing to follow the policy the agency develops to assist in carrying out its mandate.

Moreover, to accord the OCO access to the requested information would further erode public confidence in the confidentiality of the reporting source; this would also potentially increase the risk of unauthorized or inadvertent disclosure of that information. As an example, family members (and, therefore perpetrators) are individuals that are authorized to file a complaint with the Ombudsman. There is potential for the identity of a protective services complaint source to be inadvertently released to a person who is listed on the Central Registry, therefore placing the complaint source who is a family member at risk of harm for retaliation. Additionally, mandated reporters may be somewhat accustomed to receiving follow-up contacts from oversight/regulatory agencies; however, non-mandated reporters

are not. The vast majority of child deaths occur in children under the age of five. These children are not in school and are often very limited in their contacts with mandated reporters. Children under the age of five are particularly vulnerable to life threatening abuse and/or neglect and FIA relies heavily on non-mandated reporters to file complaints of abuse/neglect on behalf of these children.

FIA is concerned about further erosion of protections offered to individuals who report child abuse/neglect. As such, FIA will continue to encourage the reporting of abuse/neglect by the general public, in part by protecting their right to report with a high degree of confidence that their name will be kept confidential. At a minimum, FIA would suggest that the OCO's recommended change to the Child Protection Law be amended to include the following language in Section 7 (2) (n): "**However, the Ombudsman may not disclose the identity of a reporting person for any reason whatsoever.**" FIA also suggests similar language be included in PA 204 Section 9.

Progress on Previous Annual Report Recommendations (1995-2000)

One of the OCO's key statutory responsibilities is to make recommendations to the FIA and the legislature for changes in State laws, policies, and procedures governing Michigan's child welfare system. These recommendations are issued in each OCO annual report and arise from complaints received and/or investigated by the OCO during the previous reporting period.

Over the past five years, the OCO has made a total of 105 recommendations for changes to State laws and agency rules and policies. Of those recommendations, 74 (70 percent) have been implemented, 16 (15 percent) have been partially implemented, and 15 (14 percent) have not been implemented.

Progress on Annual Report Recommendations 1995 - 2000

Year	Implemented	Partially Implemented	Not Implemented	Total Number
1995-96	52	8	1	61
1996-97	11	5	3	19
1997-98	4	0	1	5
1998-99	5	1	6	12
1999-00	2	2	4	8
Total	74 (70%)	16 (15%)	15 (14%)	105

Recommendations Partially Implemented

Policy/Practice	Law	Total
16	0	16

Recommendations Not Implemented

Policy/Practice	Law	Total
8	6	14

LEGISLATIVE RECOMMENDATIONS NOT IMPLEMENTED TO DATE

As indicated in the chart, six legislative recommendations made by the OCO have not been implemented to date. In response to the OCO, the FIA indicated agreement or partial agreement with five of the recommendations. Some recommendations are presently under consideration by the legislature. The proposed recommendations for legislative action are outlined below, and continue to be supported by the OCO:

1. Friend of the Court Records: The OCO recommends that Friend of the Court reports shall be allowed into evidence in child protective proceedings.

2. Nonparent Adult Definition: The OCO recommends a statutory amendment to the definition of “nonparent adult” found in MCL 722.622(2)(n)(iii). Currently, MCL 722.622(2) identifies individuals who may be held responsible for abusing and/or neglecting a child. The “nonparent adult” category allows the State to hold individuals who have substantial and regular contact with the child, and a close relationship with a person responsible for the child’s health or welfare, but are not legally responsible for the child, liable for harming that child. The OCO recommends amending subsection (iii) to simply read, “Is not the child’s parent.” By striking the phrase, “or a person

otherwise related to the child by blood or affinity to the third degree,” the law would allow the State to hold relatives, who do not reside in the child’s home, but who have a close, personal relationship with the child, responsible under the definition of “nonparent adult” if they harm the child. At the present time, CPS is unable to substantiate and list such an individual as a perpetrator on the Central Registry.

3. Provide CPS Records to Family Court: The OCO recommends a statutory amendment to the CPL requiring the FIA to provide information to the Family Court with jurisdiction over a custody/visitation or guardianship case when CPS finds a preponderance of evidence that a child has been abused or neglected and: a) the FIA is aware that the child is the subject of court ordered custody/visitation or a legal guardianship; and/or b) the FIA is aware that the adult perpetrator is a party to a court ordered custody/visitation action or is a court appointed legal guardian of a child.

4. Disclose Central Registry Information: The OCO recommends a statutory change to the CPL requiring CPS to disclose certain Central Registry information to parents. Specifically, the CPL should be amended to direct the FIA to release Central Registry information to a parent or a person legally responsible for a child if the FIA becomes aware that an individual with a substantiated history of child abuse or neglect has moved

into a home where children reside. The CPS “Notice of Action and Rights” due process letter sent to substantiated perpetrators placed on the Central Registry should inform the perpetrator of this new policy. The OCO also recognizes a perpetrator’s right, as part of due process, to file a request for expunction. Therefore, if a perpetrator has filed a request for expunction according to the process outlined in the due process notification letter, the FIA shall not release the Central Registry information until the request for expunction process has been completed.

5. Attorney Representation at Court Hearings: The OCO recommends a statutory provision be enacted to require that at CPS and foster care hearings the FIA or its contract agency be represented by an attorney.

6. Expand Definition of “Omission”: The OCO recommends a statutory amendment to Section 136b(1)(b) of the Michigan Penal Code to expand the definition of the term “omission” to include identical language as found in Section 2(f)(ii) of the Child Protection Law. Specifically, the OCO recommends the following amended language:

“Omission” means a willful failure to provide the food, clothing, or shelter necessary for a child’s welfare or the willful abandonment of a child, or placing a child at an unreasonable

risk to the child's health or welfare by failure of the parent, legal guardian, or any other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

The OCO recognizes that budgetary considerations may prevent implementation of some recommendations in a particular fiscal year.

Appendix A

Acknowledgments

The OCO would like to thank Governor John Engler for the opportunity to improve the child welfare system, and the State Senators and State Representatives of the Michigan legislature for their continuing interest in our office.

The OCO also appreciates the cooperation and efforts of FIA Director Douglas Howard, the staff of the Office of the Family Advocate, and the staff of FIA and private child-placing agencies throughout the State. In particular, the OCO would like to acknowledge FIA and private agency front-line workers for their dedicated and caring efforts on behalf of Michigan's children.

While it is impossible to acknowledge everyone who has played a significant role in the continuing efforts of the OCO, we are grateful to all those individuals who have provided us with their assistance and expert advice. The OCO is also grateful to those individuals who have contacted the office on behalf of at-risk children. We hope that we have served them, and the children that they brought to our attention, well.

Finally, acknowledgment must be given to the professional and indispensable efforts of the staff who comprise the Office of the Children's Ombudsman for their dedication to assisting the citizens who contact the office on behalf of children in need.

Appendix B

OCO Investigations by County (October 1, 2000 to September 30, 2001)

County	Investigations	County	Investigations	County	Investigations
Alcona	0	Gratiot	1	Missaukee	0
Alger	2	Hillsdale	2	Monroe	2
Allegan	4	Houghton	1	Montcalm	2
Alpena	0	Huron	0	Montmorency	1
Antrim	3	Ingham	13	Muskegon	3
Arenac	1	Ionia	2	Newaygo	2
Baraga	0	Iosco	0	Oakland	21
Barry	0	Iron	0	Oceana	1
Bay	7	Isabella	1	Ogemaw	0
Benzie	1	Jackson	4	Ontonagon	0
Berrien	0	Kalamazoo	6	Osceola	1
Branch	2	Kalkaska	1	Oscoda	0
Calhoun	5	Kent	14	Otsego	1
Cass	1	Keweenaw	0	Ottawa	1
Charlevoix	0	Lake	1	Presque Isle	0
Cheboygan	0	Lapeer	1	Roscommon	0
Chippewa	0	Leelanau	0	Saginaw	4
Clare	0	Lenawee	3	St. Clair	6
Clinton	1	Livingston	1	St. Joseph	3
Crawford	2	Luce	1	Sanilac	4
Delta	0	Mackinac	0	Schoolcraft	0
Dickinson	0	Macomb	15	Shiawassee	2
Eaton	1	Manistee	0	Tuscola	1
Emmet	0	Marquette	1	Van Buren	1
Genesee	13	Mason	0	Washtenaw	1
Gladwin	0	Mecosta	3	Wayne	47
Gogebic	0	Menominee	0	Wexford	2
Grand Traverse	4	Midland	1	Total	225²⁷

²⁷ The total number (225) is higher than the number of cases investigated (166) because some investigations involved more than one county.

Appendix C

COMPLAINT PROCESS AND INVESTIGATIVE PROCEDURES

This appendix describes the procedures the OCO has established under the mandate of PA 204, Section 4(2)²⁸ to receive and investigate complaints.

Confidentiality

The OCO's investigative records are by law confidential, and are exempt from Freedom of Information Act (FOIA) requests.

Complaint Intake

Section 5 of PA 204 lists those individuals²⁹ who can officially make complaints to the OCO. While certain individuals are not eligible to be official complainants, the Ombudsman has the discretion under Section 6 of PA 204 to open a case upon his own initiative if he believes that an investigation is warranted.

Complaints are received via telephone, mail, fax, and e-mail, with the majority of complaints being received by telephone. All complaints are directed to the Intake Investigator. Standard information, such as the complainant's name, address, telephone number, and names and ages of the children involved, are entered into the OCO's automated database, along with a summary of the complaint and the action the complainant is requesting from the OCO. The confidential database allows the OCO to track the characteristics and progress of each case,

examine trends and patterns, and compile the results of investigations.

If a complaint falls outside the jurisdiction of PA 204, the Intake Investigator will refer the complainant to other agencies or individuals who may be able to assist in resolving the problem. All complaints that fall within the statutory guidelines of PA 204 are brought to the attention of the Ombudsman and a decision is made regarding what course of action will be taken.

COMPLAINT CATEGORIES

Complaints generally fall into three categories: Inquiries, Referrals, and Valid Complaints.

Inquiries are complaints that do not involve CPS, foster care, or adoption services. These complaints might involve custody matters, child support, school problems, or juvenile delinquency, which the OCO has no statutory authority to investigate. Inquiries also include general requests for information about some aspect of the child welfare system.

During this fiscal year, 134 complaints were classified as inquiries.

Referrals are complaints that concern a child involved with CPS, foster care, or adoption services, but the complaint is not about the FIA or a private agency. Rather, the complaint is about a component of the child welfare system

28 PA 204, Section 4(2): "The Ombudsman shall establish procedures for receiving and processing complaints from complainants, conducting investigations, holding hearings, and reporting findings resulting from investigations."

29 PA 204, Section 5, states that the following individuals may make a complaint: (a) the child, if he or she is able to articulate a complaint; (b) a biological parent of the child; (c) a foster parent of the child; (d) an adoptive parent or prospective adoptive parent of the child; (e) a legally appointed guardian of the child; (f) a guardian ad litem of the child; (g) an adult who is related to the child within the fifth degree by marriage, blood, or adoption; (h) a Michigan legislator; and, (i) an attorney for any individual listed in sections (a) through (h).

that the OCO has no jurisdiction to investigate; for example, law enforcement, attorneys, or the court system.

During this fiscal year, 98 complaints were classified as referrals.

Verbal or written referral information is provided to those individuals whose complaints are classified as “inquiries” or “referrals,” to assist in resolving their particular problem or provide them the information they are seeking.

Valid complaints fall within the statutory guidelines of PA 204. These complaints concern the actions or inaction of the FIA and/or a private agency as they relate to a child who is involved with CPS, foster care, or adoption services. Not all complaints that fall within the OCO’s authority are opened for investigation. For example, a complaint might concern an event which occurred many years prior and involvement by the OCO would not serve any purpose, or a complaint is in regard to an issue that has since been addressed through new policy or law. In some cases, the complainant may request an outcome that the OCO has no authority to provide, such as restoring parental rights; or the complainant simply disagrees with the agency’s actions, even though the agency has complied with law and policy. If a

valid complaint is not opened for investigation, a verbal or written decision and explanation is provided to the complainant along with additional information or suggestions to assist them. In September 1999, a new category, “valid complaint-not opened,” was added to the automated database to enable the OCO to track these complaints.

Pursuant to PA 204, Section 7(3),³⁰ the OCO encourages individuals to pursue existing remedies to address their concerns before the OCO accepts a complaint for investigation. For example, if a foster parent complains that a worker is not providing needed services to a foster child, the OCO will recommend the foster parent contact the worker’s supervisor or agency director to see if the problem can be resolved by the agency. If the problem cannot be resolved, the OCO may open the case.

Preliminary Investigations

In some instances, the intake investigator may need more information about a complaint before it can be determined whether an investigation by the OCO is appropriate or warranted. In such cases, the intake investigator may contact the agency worker or supervisor, or other collateral sources to gather additional information to assist in making a determination.

Investigations

When a complaint is accepted for investigation, a letter is sent informing the complainant that the case will be reviewed. Goals for the investigation are established by the Ombudsman and the Intake Investigator, and are entered into the OCO’s confidential database. A request for the case file is made through the FIA’s Office of the Family Advocate indicating the type of case (CPS, foster care, or adoption) and the nature of the complaint.

Section 8 of PA 204³¹ authorizes the FIA and/or private agency to release confidential case file documentation to the Ombudsman, and to assist the Ombudsman in obtaining the necessary releases for those documents that are specifically restricted. Upon receipt of the case file, the case is assigned to a lead investigator.

Each complaint assigned for investigation is subjected to a comprehensive review process. Generally, the investigation focuses on the issues identified by the complainant. However, the investigation is not limited to those issues and if other violations of law or policy are found, they will be addressed in a report to the agency. Case investigations are time-intensive and involve a thorough review of the documentation included in the case file.

In addition to a review of the case file, investigations include interviews with agency

30 See Appendix F, p. 42

31 See Appendix F, p. 42

personnel and other interested parties, and in some instances, court appearances, case conferences, and consultations with outside experts. Throughout the investigative process team members consult with each other, as well as the Ombudsman and the supervising investigator, to discuss case progress and any emergent issues.

Findings

At the conclusion of an investigation, the OCO either affirms or disaffirms the actions of the agency in question. If the OCO concludes that the FIA and/or the private agency complied with law and policy, a letter is sent to the complainant which restates the original complaint, outlines the steps taken by the OCO to investigate the case, and affirms the actions of the agency. A copy of this letter, with the identity of the complainant removed, is sent to the FIA and/or private agency involved in the investigation.

If the OCO finds that the actions of FIA and/or the private agency did not comply with law or policy, or were imposed without adequate statement of reason or were based on irrelevant, immaterial, or erroneous grounds, the OCO issues a draft report of Findings and Recommendations (F&R) to the FIA and/or private agency. Agencies are provided with 60 days to review and respond to the Findings and Recommendations detailed in the report. The complainant then receives a closing

letter from the OCO that includes the OCO's recommendations, the agency's response, and any actions taken by the agency to correct the identified problem(s). A copy of this letter is also sent to the FIA or private agency with the identity of the complainant removed.

In some cases, the OCO may issue a letter to the complainant affirming the agency's actions with regard to the complainant's specific concern, but issue an F&R to the agency if other violations are found. For example, the complainant may allege that protective services did not adequately investigate an allegation of abuse and neglect. The OCO finds that the complaint was properly investigated, and the child is now in foster care. However, in reviewing the case file, the OCO finds violations related to the handling of the foster care case. In this instance, an affirmation letter is sent to the complainant with regard to the specific complaint, and an F&R regarding the violations pertaining to foster care is issued to the agency.

Case Closure

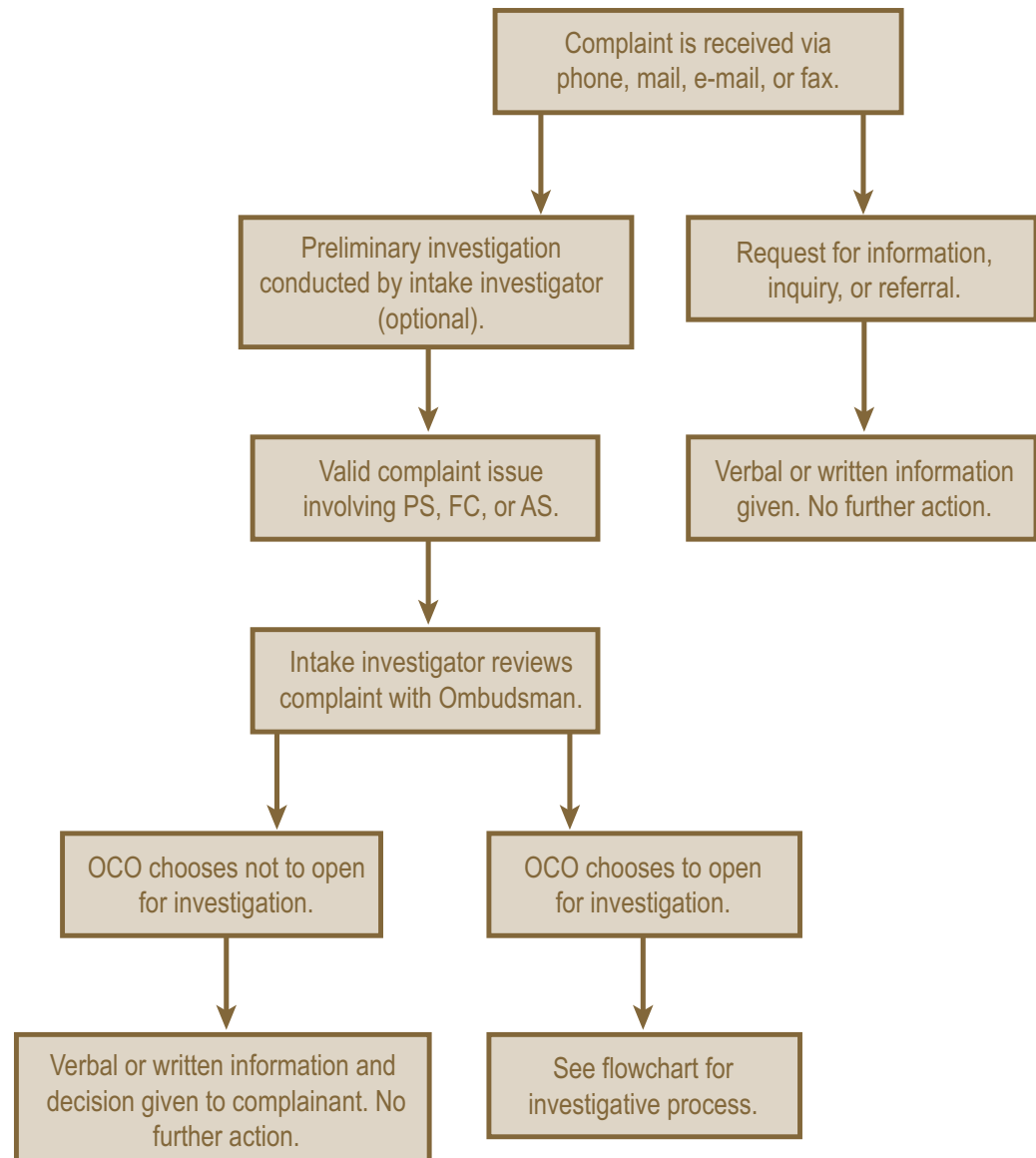
Case closure generally occurs when the closing letter is sent to the complainant either affirming the actions of the FIA and/or private agency, or reporting the recommendations from an F&R. Occasionally, a case is closed because the complainant's issues have been resolved, either by the actions of the FIA or private agency, or by another entity such as the court, or because the circumstances affecting

the case have changed. In this instance, the OCO sends a closing letter to the complainant outlining the issue(s) involved in the case and the reason(s) for case closure.

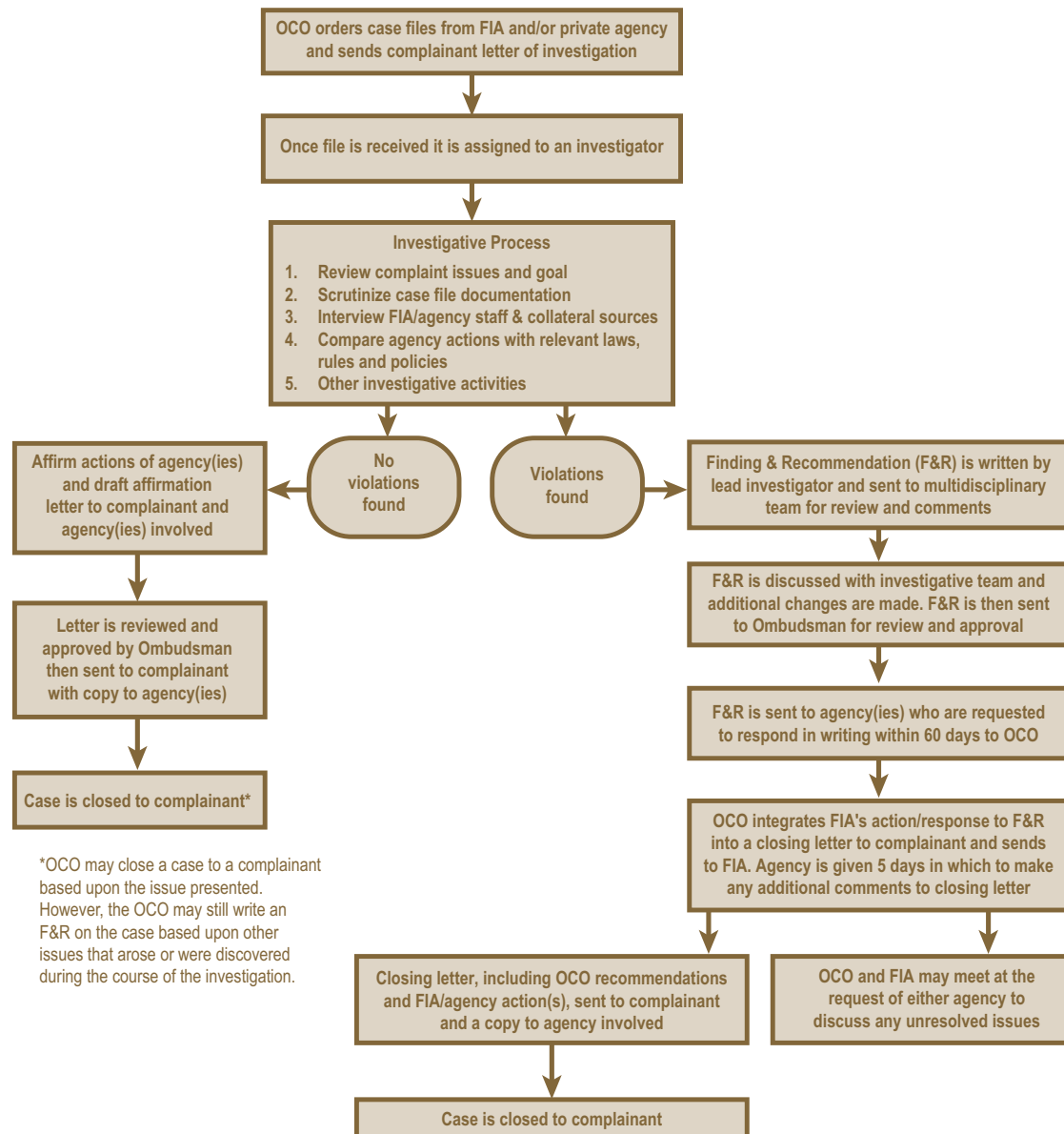
In a few instances, case closure is requested by the complainant after the case is opened, but prior to an investigation being commenced. The Ombudsman may decide not to conduct an investigation under these circumstances, but instead send a letter to the complainant and to the FIA and/or private agency indicating that the case has been closed at the complainant's request. The Ombudsman may also choose to proceed with the investigation upon the Ombudsman's own initiative.

Appendix D

OCO Intake Process



OCO Investigation Process



Appendix E

Multi-disciplinary Team Training October 1, 2000 – September 30, 2001

- Governor's Task Force on Children's Justice Summit, "The Effects of Violence on Children," Lansing
- FIA – 7th Annual Medical Conference – "Lies, Lesions and Lives Ruined: The Manifestations of Child Maltreatment," Mt. Pleasant
- Michigan Association of Community Mental Health, Annual Fall Conference, Traverse City
- Michigan Association of Community Mental Health Boards Annual Winter Conference, "Partnerships and Collaboration," Lansing
- Michigan League for Human Services 88th Annual Conference: "Investing in Michigan's Future: Widening the Opportunities for All," Lansing
- Child Abuse and Neglect Conference – Prevention, Assessment, and Treatment – 9th Annual Michigan Statewide Conference, Ypsilanti
- Adoption and Safe Families Act – Kent County Probate Court, Grand Rapids
- Specialized Child Abuse Training – Legislative, Legal and Policy Update, Prosecuting Attorney's Association of Michigan, Lansing
- 3rd National Roundtable on Implementing the Adoption & Safe Families Act – American Humane Association – Baltimore, Maryland
- Violence Against Women Project – Domestic Violence and Child Welfare Think Tank – Prosecuting Attorney's Association of Michigan, East Lansing
- 6th Biannual Conference on Child Maltreatment: Abusive Head Trauma, DeVos Children's Hospital, Grand Rapids
- National Association of Counsel for Children, 23rd National Children's Law Conference, "Improving the Professional Response to Children in the Legal System," Washington, D.C.
- 13th National Conference on Child Abuse and Neglect, "Faces of Change: Embracing Diverse Cultures and Alternative Approaches," – American Professional Society on the Abuse of Children, Albuquerque, New Mexico
- FIA Child Welfare Institute Training Sessions: Mental Health, Juvenile Sex Offenders, Adoption, CPS

Administrative Hearings Preparation,
Solution Focused Interviewing,
Children's Protective Services,
Domestic Violence, Adoption Legal,
Foster Care, Health/Medical, CPS/FC
Legal Issues, Strengths Approach,
Substance Abuse, Youth Gangs

- New Foster Home Rules; Certification
Training – Child Foster Home
Licensing, Bureau of Regulatory
Services Training, Lansing

Appendix F

PA 204 of 1994

Act No. 204
Public Acts of 1994
Approved by the Governor
June 20, 1994
Filed with the Secretary of State
June 21, 1994

STATE OF MICHIGAN 87TH LEGISLATURE REGULAR SESSION OF 1994

Introduced by Senators Welborn, Dingell, Geake, Cisky, Dillingham, Gougeon, McManus, Wartner, Bouchard, DeGrow, Pridnia, Honigman, Gast, Hoffman, Arthurhultz, and Hart

ENROLLED SENATE BILL No. 723

AN ACT to create a Children's Ombudsman; to prescribe the powers and duties of the Children's Ombudsman, certain state departments and officers, and certain county and private agencies serving children; and to provide remedies from certain administrative acts.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as "the Children's Ombudsman act."

Sec. 2. As used in this act:

(a) "Administrative act" includes an action, omission, decision, recommendation, practice, or other procedure of the department of social services, an adoption attorney, or a child placing agency with respect to a particular child related to adoption, foster care, or protective services.

(b) "Adoption attorney" means that term as defined in section 22 of the adoption code, being section 710.22 of the Michigan Compiled Laws.

(c) "Adoption code" means chapter X of Act No. 288 of the Public Acts of 1939, being sections 710.21 to 710.70 of the Michigan Compiled Laws.

(d) "Child placing agency" means an organization licensed or approved by the department of social services under Act No. 116 of the Public Acts of 1973, being sections 722.111 to 722.128 of the Michigan Compiled Laws, to receive children for placement in private family homes for foster care or adoption and to provide services related to adoption.

(e) "Child" means an individual under the age of 18.

(f) "Complainant" means an individual who makes a complaint as provided in section 5.

(g) "Department" means the department of social services.

(h) "Foster parent" means an individual licensed by the department of social services under Act No. 116 of the Public Acts of 1973 to provide foster care to children.

(i) "Official" means an official or employee of the department or a child placing agency.

(j) "Ombudsman" means the children's Ombudsman created in section 3.

Sec. 3. (1) As a means of monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, and treatment of children in foster care and adoptive homes, the children's Ombudsman is created as an autonomous entity in the department of management and budget. The Ombudsman shall exercise its powers and duties, including the functions of budgeting and procurement and other management-related functions, independently of the director of the department of management and budget.

(2) The Ombudsman shall be appointed by the Governor and shall serve at the pleasure of the Governor.

Sec. 4. (1) The Ombudsman shall establish procedures for budgeting, expending funds, and employing personnel. Subject to annual appropriations, the Ombudsman shall employ sufficient personnel to carry out the duties and powers prescribed by this act.

(2) The Ombudsman shall establish procedures for receiving and processing complaints from complainants, conducting investigations, holding hearings, and reporting findings resulting from investigations.

Sec. 5. All of the following individuals may make a complaint to the Ombudsman with respect to a particular child, alleging that an administrative act is contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds:

- (a) The child, if he or she is able to articulate a complaint.
- (b) A biological parent of the child.
- (c) A foster parent of the child.
- (d) An adoptive parent or a prospective adoptive parent of the child.
- (e) A legally appointed guardian of the child.
- (f) A guardian ad litem of the child.
- (g) An adult who is related to the child within the fifth degree by marriage, blood, or adoption, as defined in section 22 of the adoption code, being section 710.22 of the Michigan Compiled Laws.
- (h) A Michigan Legislator.
- (i) An attorney for any individual described in subparagraphs (a) to (g).

Sec. 6. The Ombudsman may do all of the following:

- (a) Upon its own initiative or upon receipt of a complaint from a complainant, investigate an administrative act that is alleged to be contrary to law or rule, or contrary to policy of the department or a child placing agency, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds.
- (b) Decide, in its discretion, whether to investigate a complaint.
- (c) Upon its own initiative or upon receipt of a complaint from a complainant, conduct a preliminary investigation to determine whether an adoption attorney may have committed an administrative act that is alleged to be contrary to law, rule, or the Michigan rules of professional conduct adopted by the Michigan supreme court.

(d) Hold informal hearings and request that individuals appear before the Ombudsman and give testimony or produce documentary or other evidence that the Ombudsman considers relevant to a matter under investigation.

(e) Make recommendations to the Governor and the legislature concerning the need for protective services, adoption, or foster care legislation.

Sec. 7. (1) Upon rendering a decision to investigate a complaint from a complainant, the Ombudsman shall notify the complainant of the decision to investigate and shall notify the department, adoption attorney, or child placing agency of the intention to investigate. If the Ombudsman declines to investigate a complaint or continue an investigation, the Ombudsman shall notify the complainant and the department, adoption attorney, or child placing agency of the decision and of the reasons for the Ombudsman's action.

(2) If the preliminary investigation described in section 6 leads the Ombudsman to believe that the matter may involve misconduct by an adoption attorney, the Ombudsman shall immediately refer the complaint to the attorney grievance commission of the state bar of Michigan.

(3) The Ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint open to the complainant before pursuing a complaint with the Ombudsman. Subsequent to the administrative processing of a complaint, the Ombudsman may conduct further investigations of any complaint upon the request of the complainant or upon the Ombudsman's own initiative.

(4) If the Ombudsman finds in the course of an investigation that an individual's action is in violation of state or federal criminal law, the Ombudsman shall immediately report that fact to the county prosecutor or the attorney general. If the complaint is against a child placing agency, the Ombudsman shall refer the matter to the department of social services for further action with respect to licensing.

(5) The Ombudsman may file a petition on behalf of a child requesting the court to take jurisdiction under section 2(b) of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.2 of the Michigan Compiled Laws, or a petition for termination of parental rights under section 19b of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.19b of the Michigan Compiled Laws, if the Ombudsman is satisfied that the complainant has contacted the department, the prosecuting attorney, the child's attorney, and the child's guardian ad litem, if any, and that none of these persons intend to file a petition as described in this subsection.

Sec. 8 (1) The department and a child placing agency shall do all of the following:

(a) Upon the Ombudsman's request, grant the Ombudsman or its designee access to all relevant information, records, and documents in the possession of the department or child placing agency that the Ombudsman considers necessary in an investigation.

(b) Assist the Ombudsman to obtain the necessary releases of those documents that are specifically restricted.

(c) Provide the Ombudsman upon request with progress reports concerning the administrative processing of a complaint.

(2) The department, an adoption attorney, and a child placing agency shall provide information to a biological parent, prospective adoptive parent, or foster parent regarding the provisions of this act.

Sec. 9. The Ombudsman shall treat all matters under investigation, including the identities of recipients or individuals from whom information is acquired, as confidential, except so far as disclosures may be necessary to enable the Ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation. A record of the office of the Ombudsman is confidential, shall be used only for purposes set forth in this act, and is not subject to court subpoena. A record of the office of the Ombudsman is exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

Sec. 10. (1) The Ombudsman shall prepare a report of the findings of an investigation and make recommendations to the department or child placing agency if the Ombudsman finds 1 or more of the following:

(a) A matter should be further considered by the department or child placing agency.

(b) An administrative act should be modified or canceled.

(c) Reasons should be given for an administrative act.

(d) Other action should be taken by the department or child placing agency.

(2) Before announcing a conclusion or recommendation that expressly or by implication criticizes an individual, the department, or a child placing agency, the Ombudsman shall consult with that individual, the department, or the child placing agency. When publishing an opinion adverse to the department or child placing agency, the Ombudsman shall include in the publication any statement of reasonable length made to the Ombudsman by the department or child placing agency in defense or mitigation of the action. The Ombudsman may request to be notified by the department or child placing agency, within a specified time, of any action taken on any recommendation presented.

(3) The Ombudsman shall notify the complainant of the actions taken by the Ombudsman and by the department or child placing agency.

(4) The Ombudsman shall provide the complainant with a copy of its recommendations on a complaint.

(5) The Ombudsman shall submit to the governor, the director of the department, and the legislature an annual report on the conduct of the Ombudsman, including any recommendations regarding the need for legislation or for change in rules or policies.

Sec. 11. (1) An official, the department, or a child placing agency shall not penalize any person for filing a complaint or cooperating with the Ombudsman in investigating a complaint.

(2) An individual, the department, an adoption attorney, or a child placing agency shall not hinder the lawful actions of the Ombudsman or employees of the Ombudsman.

Sec. 12. The authority granted the Ombudsman under this act is in addition to the authority granted under the provisions of any other act or rule under which the remedy or right of appeal or objection is provided for a person, or any procedure provided for the inquiry into or investigation of any matter. The authority granted the Ombudsman does not limit or affect the remedy or right of appeal or objection and is not an exclusive remedy or procedure.

Sec. 13. The Ombudsman shall maintain a registry of adoption attorneys who provide services described in the adoption code. The Ombudsman shall remove an adoption attorney from the registry under any of the following circumstances:

(a) The attorney requests that his or her name be removed from the registry.

(b) The attorney fails to register as provided in section 5 of the foster care and adoption services act.

(c) The Ombudsman receives notice that the attorney's license to practice law is suspended or revoked.

Sec. 14. This act shall take effect January 1, 1995.

Sec. 15. This act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

(a) Senate Bill No. 299.

(b) Senate Bill No. 721.

(c) Senate Bill No. 722.

(d) Senate Bill No. 724.

(e) Senate Bill No. 725.

(f) House Bill No. 4201.

(g) House Bill No. 4428.

(h) House Bill No. 4614.

(i) House Bill No. 4638.

This act is ordered to take immediate effect.

Office of Children's Ombudsman

Mailing Address

P.O. Box 30026
Lansing, MI 48909

Telephone

(517) 373-3077

Toll Free

(800) 642-4326

Fax:

(517) 335-4471

Internet:

Childombud@michigan.gov

Web site:

<http://www.michigan.gov/oco>

TTY:

Michigan Relay Center (800) 649-3777